

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DOMINIQUE SAVAGE,
DESTINY SAVAGE, DERRICK SAVAGE,
DIAMOND SAVAGE, DYNASTY SAVAGE,
DWAYNE SAVAGE, and DA'JANAY SAVAGE,
Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

OLLIE MAE SAVAGE,

Respondent-Appellant,

and

DEWAYNE T. DUKES,

Respondent.

UNPUBLISHED
February 26, 2009

No. 286620
Wayne Circuit Court
Family Division
LC No. 08-476647

Before: Whitbeck, P.J., and O'Connell and Owens, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the seven minor children under MCL 712A.19b(3)(b)(ii), (g), and (j). We affirm.

The trial court did not clearly err by finding that at least one statutory ground for termination was established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The evidence in the trial court clearly demonstrated that respondent mother failed to provide proper care and custody for the children and that there was no reasonable likelihood that she would be able to do so within a reasonable time considering their ages. MCL 712A.19b(3)(g). The six eldest children were removed from respondent mother's care after she admitted taking no action upon learning that a nonrelative living in the home had sexually abused at least one of the children. That individual was allowed to continue residing in the home, and respondent mother did not contact the police or seek medical attention for the children. Respondent mother further admitted that she failed to provide any prenatal care for Da'Janay, who was born during the proceedings, until at least eight months of pregnancy.

These admissions are amply adequate to establish respondent mother's failure to provide proper care and custody for the children. *Id.*

The second prong of statutory subsection (g) -- that there was no reasonable likelihood that respondent mother would be able to provide proper care and custody for the children within a reasonable time considering their ages -- was also established by clear and convincing, legally admissible evidence.¹ Sadly, the record indicates that respondent mother, who is cognitively limited, lacks the ability to protect her children. At the Clinic for Child Study evaluation, respondent mother indicated that "I don't know if that [failing to take action or call the police when sexual abuse was disclosed] was right or wrong . . . I didn't know if I should have called the police." The clinician indicated that respondent mother has significant cognitive impairments that prevent her from understanding the consequences of her actions and their effects upon the children. In addition to the evidence of respondent mother's inability to protect the children from sexual abuse, the record indicates that she is unable to recognize and address their very significant special needs. She did not believe that the children exhibited any developmental, cognitive, or educational problems. Yet foster care worker Cherise Caldwell testified that the older children were unable to recite the alphabet, spell their names, read, write, or count, although they did attend school.² At the age of eight, Dwayne could not speak intelligibly. When placed in care, Dominique, aged fourteen, did know how to wash herself and needed assistance in the mechanics of basic hygiene. The children's cognitive skills were so delayed that it was difficult to obtain basic information from them. Ms. Caldwell felt that respondent mother's limitations prevented her from addressing the needs of the children. Given respondent mother's inability to recognize the marked special needs of these children, it is reasonable to conclude that she will be unable to appropriately address them. Under these circumstances, the trial court did not clearly err by finding that there was no reasonable likelihood that respondent mother would be able to provide proper care and custody for the children within a reasonable time considering their ages. MCL 712A.19b(3)(g).

Respondent mother contends that termination was improper because she was not provided with services to improve her parenting skills. However, termination at an initial dispositional hearing is not only permitted, but mandated when it is requested in the original or amended petition; jurisdictional grounds are established by a preponderance of the evidence; and at least one statutory ground for termination is established by clear and convincing, legally admissible, evidence. MCR 3.977(E). When those circumstances are present, as in this case, the trial court "shall order that additional efforts for reunification of the child with the respondent shall not be made . . ." *Id.* The provision of services would be inconsistent with petitioner's request for termination at the initial dispositional hearing, and petitioner's failure to provide services in these circumstances warrants no relief on appeal.

¹ Because termination was sought and granted at the initial dispositional hearing, the statutory grounds were required to be established by clear and convincing, legally admissible evidence. MCR 3.977(E)(3).

² The ages of the children when placed in care were fourteen, twelve, ten, eight, six, and two.

The same evidence that established that there was no reasonable likelihood that respondent mother would be able to provide proper care and custody for the children within a reasonable time considering their ages, MCL 712A.19b(3)(g), equally establishes that, due to her capacity, there is a reasonable likelihood that the children would be harmed if placed in her care, MCL 712A.19b(3)(j), and the trial court did not clearly err in so finding.³

Finally, the trial court did not clearly err by finding that termination was in the best interests of the children. MCL 712A.19b(5). The evidence indicated that adoption of the three oldest children would likely not be feasible, and foster care worker Jewel Greenway indicated that permanent foster family agreements were being considered for Diamond and Dominique. Although this arrangement does not require the termination of parental rights, Ms. Greenway felt that termination would benefit the children emotionally because they would know that returning home was not an option. The trial court expressly stated that it was persuaded by Ms. Greenway's reasoning that termination would give the older children some stability. Especially considering evidence that any bond between respondent mother and the children was limited, this record supplies no basis to conclude that the trial court's finding regarding the three oldest children was clearly erroneous.

On appeal, respondent contests the best interests finding only concerning the three oldest children and makes no argument concerning the four youngest. In any event, the trial court did not clearly err by finding that termination was in the best interests of these children as well. Ms. Greenway testified that Dwayne, Destiny, Derrick, and Da'Janay are adoptable. Again, in view of respondent mother's inability to meet the needs of the children and the limited bond exhibited at visits and in the Clinic for Child Study, there is no basis to conclude that the trial court clearly erred in its best interests determination.

Affirmed.

/s/ William C. Whitbeck
/s/ Peter D. O'Connell
/s/ Donald S. Owens

³ We do not rely on MCL 712A.19b(3)(b)(ii) in affirming the termination of respondent mother's parental rights. Although the evidence clearly demonstrates, by way of respondent mother's own admission, that she allowed James Twilley to remain in the home after she was advised in the spring of 2007 that he sexually abused at least one of the children, it is devoid of evidence that further sexual abuse occurred. And, although respondent mother reported to a protective services worker in January 2008 that Mr. Twilley had been previously accused of sexual misconduct and had been incarcerated in connection with that accusation, the record is also devoid of evidence that respondent mother knew of Mr. Twilley's history before the single established incident of sexual abuse occurred in the spring of 2007. Thus, although respondent mother left the children vulnerable to further sexual abuse, the lack of evidence that further sexual abuse then took place, precludes a finding that respondent mother, having "the opportunity to prevent . . . sexual abuse failed to do so" MCL 712A.19b(3)(b)(ii).